HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION Nos.24056, 24057 &
24058 of 1999 And 15809 of 2000

Date: 01-08-2007.

Between :

G.Rajender Reddy & others.

.....Petitioners

And

The State of A.P., rep. by The Forest Range Officer,
Kaddam & others.

.....Respondents.

For the petitioners : Mr.D.Prakash Reddy, Advocate.

For the Respondents : G.P. for Forest.

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> Head Note:

? CITATIONS:

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COMMON JUDGMENT :

In this batch of writ petitions, identical questions of fact and law arise. Hence, they are disposed of by a common judgment.

In the month of December, 1995, the Divisional Forest Officer, Nirmal, alongwith the Divisional Forest Officer, Flying Squad and other officials in the District, raided the residential premises of the petitioners and found that teak timber logs were stored at various places. On finding that the forest produce so found was not covered by any permit under the Rules framed under the A.P. Forest Act, 1967 (for short 'the Act'), cases were

registered and the forest produce was transported to the Government Timber Depot, Khanapur under the cover of panchanama. The main allegation was that no permit, as required under Rule 2(3) of A.P. Forest Produce Transit Rules, 1970 (for short 'the Transit Rules') was obtained and that the petitioners violated Rule 2 of A.P. Teakwood Possession Rules, 1970 (for short 'the Teakwood Rules').

In the proceedings that were initiated under Section 44 of the Act, the petitioners pleaded that they have obtained permit from the competent authority under relevant provisions of law. It was contended that the Teakwood Rules do not apply to the facts of the case inasmuch as the area where the forest produce was found, is not within 15 kilometres from the reserve forest notified for the purpose of the Teakwood Rules. Not being satisfied with the explanation offered by the petitioners, the authorized officer/Divisional Forest Officer, Nirmal, passed orders, dated 30.07.1997, directing confiscation of the seized forest produce.

Aggrieved by the orders passed by the authorized officer, petitioners filed Civil Miscellaneous Appeals under Section 44 (2-E) of the Act before the Court of Additional District Judge, Adilabad. Through separate judgments, dated 07.10.1999, the appellate Court dismissed the appeals. Hence, these four writ petitions.

The petitioners contend that the forest produce in

question was not in transit and as such, the Transit Rules do not apply to the situation. They further contend that their possession of the forest produce cannot be treated as illegal inasmuch as the reserve forest abutting the place where the forest produce was stored, was not notified for the purpose of the Teakwood Rules.

On behalf of the respondents, a counter affidavit is filed. It is stated that the petitioners stored the teakwood in very huge quantities at a place within 15 kilometres from the reserve forest notified under Sections 4 and 15 of the Act and thereby, the prohibition under the Teakwood Rules applies. It is also stated that the permits produced by the petitioners were found to be not genuine and as such, the concurrent findings recorded by the authorized officer and the appellate Court do not warrant interference.

Sri D.Prakash Reddy, learned Senior Counsel appearing for the petitioners, submits that the prohibition contained in the Teakwood Rules operates only if the place of storage is within 15 kilometres from such reserve forest, as is notified for this purpose. According to the learned Senior Counsel, the mere fact that a forest is notified under Sections 4 and 15 of the Act, does not attract the prohibition, under the Teakwood Rules. It is also his case that the forest produce cannot be said to be in transit and insistence on permits cannot be countenanced in law.

Learned Government Pleader for Forest, on the other hand, submits that the prohibition as to possession of Teakwood gets attracted once it is found within the radius of 15 kilometres from a notified reserve forest. According to her, a notification issued under Sections 4 and 15 of the Act would hold good for the purpose of Section 29 of the Act also. By making a reference to the definition of "Forest Produce in Transit" under the Transit Rules, it is urged that even where a forest produce is stored, it becomes necessary, to obtain transit permit.

Fairly large quantity of forest produce was found in the possession of the petitioners. The authorities of the Forest Department have examined the matter from two angles. The first is with reference to the Teakwood Rules i.e. whether the possession of the forest produce by the petitioners was at a place, prohibited under those Rules. The second is that the forest produce answers the description of "Forest Produce in Transit" and thereby it was required to be covered by transit permits under the Transit Rules. Therefore, the implication of these two sets of Rules needs to be examined.

The Act provides for different regimes, in the context of transit on the one hand, and possession on the other hand, of the forest produce. Sub-section (1) of Section 29 of the Act makes this distinction very clear. It reads as

under—

> "**29. <u>Power to make rules to regulate the transit possession of timber and other forest produce:--</u>**
>
> *(1) The Government may make rules to regulate –*
>
> *(i) the floating of timber in the rivers in the State and the transit of timber and other forest produce by land or water;*
>
> (ii) *the possession of teak wood of such value as may be specified in this behalf, or red-sanders wood by any person residing in any village within a radius of fifteen kilometres of such reserved forest as may be specified in this behalf."*

From this provision, it is evident that the transport of forest produce of all categories is to be regulated. The prohibition as to possession is restricted only to the teakwood and red-sander. In other words, there is no obligation, to obtain any permit to possess forest produce, other than teakwood and red-sander, whereas the possession of these two categories of forest produce, is regulated. Further, even in respect of teakwood and red-sander, the prohibition as to possession is not absolute. The Act empowers the rule making authority to regulate possession of these two categories of forest produce, only in places, which are within the radius of 15 kilometres, "of

such reserve forest, as may be specified in this behalf". In exercise of this power, the rule making authority framed the Teakwood Rules. Rule 2 thereof reads as under—

> "No person residing in any village situated within a radius of 15 KM of such reserved forest as may be specified by the Chief Conservator of Forests in this behalf by a notification in the Andhra Pradesh Gazette shall possess a quantity of teakwood, the quantity of which exceeds quarter of a cubic metre in volume unless the teakwood bears distinguishable Government transit mark or the property mark affixed to it under the Andhra Pradesh Forest Produce Transit Rules, 1969."

Except that the quantities are mentioned, this Rule is nothing but the replica of Sub-sections (i) and (ii) of Section 29 of the Act. The common factor is that the prohibition gets attracted only when the forest produce is stored at a place, within the radius of 15 kilometres of such reserve forest as may be specified in this behalf. The Rule further provides that the notification in this regard can be issued by the Chief Conservator of Forests, in Andhra Pradesh Gazette.

The authorized officer as well as the appellate authority proceeded on the basis that the notifications issued under Sections 4 and 15 of the Act would meet the requirement under Section 29 of the Act and Rule 2 of the Teakwood Rules.

In this regard, it needs to be observed that the object

underlying the notification under Sections 4 and 15 of the Act is totally different from the one under Sub-section 1(ii) of Section 29 of the Act. In the first case, the object is to notify a forest or any land as reserve forest. With that notification, several legal consequences flow, vis-à-vis the land so notified. So far as the notification under Section 29(1)(ii) of the Act is concerned, the purpose is very limited. Except that it brings about prohibition of storage of the teakwood and red-sander within a distance of 15 kilometres from the reserve forest so notified, it does not serve any other purpose. The second important distinction is that before a notification contemplated under Section 29 (1)(ii) of the Act or Rule 2 of the Teakwood Rules is issued, there must be in existence, a reserve forest as defined under the Act. Out of such reserve forest, a portion must be notified, for the purpose of Sub-sections (i) and (ii) of Section 29 of the Act and Rule 2 of the Teakwood Rules. Possession of Teakwood, beyond the stipulated quantity becomes unlawful, within a radius of 15 kilometres from the portion of the reserve forest, so notified.

While the authorized officer did not bestow much of attention on this aspect, the appellate Court proceeded as though the notification issued under Sections 4 and 15 of the Act can be treated as the one under Sub-sections (i) and (ii) of Section 29 of the Act and Rule 2 of the

Teakwood Rules also. This approach does not accord with the provisions of the Act. When the provisions clearly insist that a notification exclusively for the purpose of prohibiting possession of Teakwood is to be issued, the general notification under Sections 4 and 15 of the Act cannot be treated as equivalent to it.

The second aspect of the matter is as to whether the possession of the forest produce by the petitioners is violative of Transit Rules. Rule 2 (3) of the Transit Rules defines "Forest Produce in Transit" as under—

> ""Forest Produce in transit" includes forest produce found stored in any place or in margin of any public road or cart track or foot-path whether or not loaded in cart or other vehicles and forest produce found in any river, canal or water course whether in rafts or not."

At the first blush, a reading of this provision gives an impression that even where a forest produce is stored, it can be treated as one in transit. It was in fact on this basis, that the respondents proceeded against the petitioners. However, on a close scrutiny of the scheme under the Rules, it becomes evident that the object of the Rules is to prohibit movement of forest produce of the specified category, unless it is covered by permits. Rules 3 and 4 of the Transit Rules make this aspect clear. The expression "forest produce in transit" occurs in Rule 11 of the Transit Rules. Rules 7 to 11 of the Transit Rules deal

with the issuance of permit and the manner in which it is to be operated. If one closely examines this set of Rules, it becomes clear that “the forest produce in transit” is that quantity of the forest produce, which is covered by a permit, but is yet to reach the destination. The words “found stored in any place” occurring in the definition, need to be read in that context. If a forest produce stored in any place is to be treated as one in transit, the scope of not only the definition, but also the Transit Rules becomes expanded and is beyond the legitimate limits, and the relevant provisions are prone to be declared as ultravires, the Act. Admittedly, the forest produce seized from the petitioners was neither covered by permits, nor was seized while in transit. Therefore, the Transit Rules do not have any application to the situation.

From the above discussion, it becomes evident that the forest produce seized from the petitioners can be confiscated if only a notification as contemplated under Sub-sections (i) and (ii) of Section 29 of the Act read with Rule 2 of the Teakwood Rules was issued by the Chief Conservator of Forests, specifically for the purpose of those provisions. Since the appellate authority treated the notification issued under Sections 4 and 15 of the Act as holding good for this purpose, the respondents did not have an occasion to bestow their attention to this question. Therefore, the matters need to be remanded.

Accordingly, the writ petitions are allowed and the orders passed by the appellate Court are set aside. The matters are remanded to the appellate Court for the limited purpose of verifying as to whether any notification as contemplated under Sub-sections (i) and (ii) of Section 29 of the Act read with Rule 2 of the Teakwood Rules existed at the relevant point of time with reference to the place from which the teakwood was seized from the petitioners. If the finding is that such a notification existed, the seizure would become valid. On the other hand, if it emerges that no such notification existed, the possession of the forest produce by the petitioners, would not become violative of the Teakwood Rules. The manner, in which the petitioners must have used or transported the forest produce, would be governed by the relevant provisions of law.

The appellate Court shall dispose of the appeals within three months from the date of receipt of a copy of this order, duly giving opportunity to both the parties to putforward their contentions on the limited aspect.

L. NARASIMHA REDDY, J

1st August, 2007

N.B:

1. The Registry shall dispatch the record forthwith.
2. L.R. copies to be marked.

(b/o)

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